



88-SBE-011

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BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of **the Appeals** of)
JAMES R. AND WANDA J. VETETO) Nos. **86A-0170-VN**
) **86A-0171**
) **86A-0172**

Appearances:

For Appellant: Alan D. Pauw
Attorney at Law

For Respondent: Paul J. Petrozzi
Counsel

O P I N I O N

These appeals are made pursuant to section **18593¹**/ of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James R. and Wanda J. Veteto against a proposed assessment of additional personal income tax and penalty in the amount of **\$5,633.04** for the year 1980, and against a proposed assessment of additional personal income tax in the amount of **\$6,399** for the year 1981; on the protest of James R. Veteto against proposed assessments of additional personal income tax in the amounts of **\$3,233.50** and **\$2,866.50** for the years 1982 and 1983, respectively; and on the protest of Wanda J. Veteto against proposed assessments of personal income tax in the amounts of **\$3,113.50** and **\$2,785.50** for the years 1982 and 1983, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation code as in effect for the **years** in issue.

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The primary question presented for our decision is whether appellants, husband and wife, were California residents for personal income tax purposes during the years-1980 through 1983, inclusive.

Appellants were married in 1947 and then lived in this state **for** many years. They owned a home as well as rental property in San Bernardino. Appellants also owned automobiles registered in this state, had bank accounts here, and received services from professionals practicing in California. Since **1975**, Mr. Veteto has spent considerable time out of this state working as an assistant superintendent for pipeline construction and quality control for **Fluor** Construction and Engineering Company (**Fluor**). Between 1975 and 1978, he worked for **Fluor** in Alaska, Saudi Arabia, and Texas while returning to California for short periods. During these absences, Mrs. Veteto apparently remained in San Bernardino. In November 1978, however, appellants leased their home, sold one of their automobiles, and moved to Louisiana where Mr. Veteto was assigned to work for the next ten months. In November 1979, the couple returned to California for approximately one month and then departed for Mr. Veteto's next job assignment in Venezuela.

In April 1980, while in Venezuela, Mrs. Veteto injured her back and returned alone to this state on the advice of doctors. Later that year, she rented an apartment, purchased a motor vehicle, and obtained a job with the County of San Bernardino. In November 1980, Mr. Veteto returned to California **for** a three-week vacation. In 1981, Mr. Veteto continued working in Venezuela except for a three-week **period** in December 1981 when he came back to this state for a vacation. Mrs. Veteto remained in the San Bernardino area for the entire year. In 1982, Mr. Veteto worked in Venezuela the first nine months but then took a three-month leave from his job, part of which was spent in California. Mrs. Veteto moved back into the family home on the expiration of the lease. In 1983, **Fluor** assigned Mr. Veteto to work in Saudi Arabia where he stayed for the next **fourteen** months except for a **10-day** vacation in California. Mrs. Veteto did not accompany her husband to Saudi Arabia, - choosing instead to remain in this state. Four years later, in October 1986, the couple dissolved their marriage.

For 1980 and 1981, appellants filed joint income tax returns which reported income only to the extent of Mrs. Veteto's salary and their rental and interest income. The **returns did** not report Mr. **Veteto's salary**.

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from his job with **Fluor**. For 1982 and 1983, Mrs. Veteto filed separate returns, reporting her salary, while Mr. Veteto failed to file returns altogether. On review, the Franchise Tax Board (respondent) learned that Mr. Veteto claimed to be a nonresident based on his extended absences from the state. Respondent further discovered that appellants, during the appeal years, owned a home and rental property in San Bernardino, an automobile registered in this state, continued to maintain accounts in California banks; and obtained professional services here. Based on these connections with this state, respondent determined that Mr. Veteto was a California domiciliary who went outside the state for temporary or transitory purposes. Consequently, respondent found Mr. and Mrs. Veteto to have been residents during each of the appeal years and taxable on all of their income. Appellants thereupon filed these appeals.

Revenue and Taxation Code section 17041, imposes a personal income tax on the entire taxable income of **every** resident of this state. Section 17014, subdivision (a), defines "resident" as a person domiciled in this state who is outside the state for a temporary or transitory purpose. The purpose of this definition is to delineate that class of individuals who should, contribute to the support of the state because they receive substantial benefits and protection from its laws and government and 'to exclude those persons who, although domiciled in this state, are outside for other than temporary or transitory purposes and thus do not enjoy the benefits and protection of the state. (Cal. Admin. Code., tit. 18, reg.. 17014, subdivision (a); Whittell v. Franchise Tax Board, 231 **Cal.App.2d** 278, 285 [41 Cal.Rptr. 6731 (1964).])

In these proceedings, appellants contend that Mr. Veteto was neither a domiciliary or resident of this state. The couple apparently concede that **Mrs. Veteto** was a resident, for they have not argued to the contrary much less raised any objections against the proposed assessments issued to her individually. Rather, appellants claim that they separated with no intention of resuming their marriage in April 1980 when Mrs. Veteto returned by herself to this state from Venezuela. They then contend that Mr. Veteto's earnings during the subsequent appeal years were separate property income which was not taxable by this state; regardless of Mrs. **Veteto's** activities or connections here, since he was not a resident. To begin to resolve this matter, our discussion starts with the inquiry whether or **not** Mr. Veteto was domiciled in this state.

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"Domicile" has been defined as "the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is **absent**, he has the intention of returning. ..."
(Whittell v. Franchise Tax Board, supra, 231 Cal.App.2d at 284.) In order to change one's domicile, a person **must** actually move to a new **residence** and intend to remain there permanently or indefinitely. (In re Marriage of Leff, 25 Cal.App.3d 630, 642 [102 Cal.Rptr. 1951 (1972)].)
Appellants have ostensibly argued that **Mr. Veteto** established a new home in Louisiana in 1979 and did not intend to ever return to California. The problem, however, with **appellants'** argument is that the record **in** this matter contains no evidence demonstrating that **Mr. Veteto** actually acquired a new domicile in Louisiana but does reveal that appellants retained their home, **car**, and bank accounts in this state. The record also shows that **Mrs. Veteto** returned to San Bernardino permanently in April 1980 while **Mr. Veteto** regularly returned to this state on leaves from his overseas assignments. Where a taxpayer's original, permanent home is in this state, we must assume that **California continues** to be their place of domicile until they can show that it clearly changed.
(Appeal of Anthony J. and Ann S. D'Eustachio, Cal. St. Bd. of Equal., May 8, 1985.)

Since **Mr. Veteto** was domiciled in 'this state, he will be treated as a **nonresident** only if he can demonstrate that his absences from California during the **years** at issue were for other than temporary or transitory purposes. Appellants contend that **Mr. Veteto** held a permanent, career position with **Fluor** and was required to work at various foreign-job sites. It is their position that the extended periods of time that **Mr. Veteto** was outside the state demonstrates that his absences were other than temporary or transitory and that he was not a California resident. We cannot agree for the following reasons.

Regulations provide that whether a taxpayer's absence from California was for a temporary or transitory purpose is essentially a question of fact to be determined by examining all the **circumstances** of each case. (Cal. Admin. Code, tit. 18, reg. 17014, subdivision (b).) Where a California domiciliary is employed outside this state, regulations also suggest that his absence will be considered for other than temporary or transitory purposes if the job is expected to last a long, permanent, or indefinite period of time. (Cal. Admin. Code, tit. 18, reg. 17014, subdivision (b); Appeal of Anthony V. and Beverly

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Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) On prior occasions, this board has held **that absences** from California for employment or business purposes are not merely temporary or transitory if they require a long or indefinite time to complete. (See, e.g., Appeal of David A. and Frances W. Stevenson, Cal. St. Bd. of Equal., Mar. 2, 1977; Appeal of Christopher T. and Hoda A. Rand, Cal. St. Bd. of Equal., Apr. 5, 1976.) More recently, we have decreed that employment abroad in a position expected to last an indefinite period of substantial duration indicates an absence for other than temporary or transitory purposes.. (Appeal of Jeffrey L. and Donna S. Egeberg, Cal. St. Bd. of Equal., July 30, 1985.)

It is well settled that **respondent's** determination of residency is **presumptively** correct, and the taxpayer bears the burden of showing error in that determination. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.) In this case, while appellants have stated that Mr. Veteto was permanently employed by **Fluor** and spent extended periods of time outside the state every year, they have not presented any arguments or evidence regarding the nature of his overseas assignments during the appeal years. **The record indicates that Mr. Veteto** worked in Venezuela in 1980, 1981, and 1982 and in Saudi Arabia in 1983 **but** it also shows that he returned to this state every year on vacation or leave. It is not clear from the record whether these assignments were short or long-term assignments or temporary or permanent ones. Appellants, moreover, have not mentioned whether **Mr. Veteto's** assignments were expected to have been permanent or indefinite nor have they provided any **documentary** evidence, such as an employment contract, from which we can establish the expected duration of his assignments. (See Appeal of Basil K. and Ploy C. Fox, Cal. St. Bd. of Equal., Apr. 9, 1986.) Without proof that **Mr. Veteto** was employed abroad in a position expected to last at least an indefinite period of substantial duration, we cannot find that his absences between 1980 and 1983 'were other than temporary or transitory in purpose. (Appeal of Edward J. Tarring, Cal. St. Bd. of Equal., Nov. 18, 1987.)

Appellants have argued that Mr. Veteto maintained few connections with this state, pointing out that he did not use the family bank accounts, retained no professional or organizational ties, and had not voted in this state for several years. Appellants' argument ignores the fact that **Mrs. Veteto** resided in the state during the appeal years and maintained the bank accounts and professional

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ties as well as employment and automobiles. She also returned to live in the family abode which the couple continued to own along with their rental **property**. While **Mr. Veteto** claims to have separated from his wife in 1980, the record shows that appellant originally claimed that **Mrs. Veteto** did not accompany her husband due to her **health problems** and that he stayed with her during his leaves from his overseas assignments. 'The couple did dissolve their marriage but that was not until after the appeal years in 1986. Appellants' retention of **the** aforementioned California connections demonstrates to us that they derived sufficient benefits and protection from the laws and government of this state during the appeal years to justify the finding that they were both residents. **Accordingly**, we must conclude that Mr. Veteto was a California resident during the appeal years.²¹

The secondary issue here is **whether respondent** properly imposed a late filing penalty against appellants in 1980. The penalty for failure to file a timely return (Rev. and **Tax**. Code § 18681) must be sustained unless the taxpayer establishes that the failure was due to reasonable cause and not willful neglect. (Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) Here, appellants admittedly filed their return in June 1980 but assert that they had requested an automatic extension of **time** to file their return and then filed the return within the extension period. Respondent, however, has stated that it has no record of appellants ever having requested an extension. **Because appellants have not proven that they requested an extension of time to file**, we must find that reasonable cause has not been shown for abatement of the penalty.

Based on the foregoing, we must conclude that appellants have not carried their burden of proof with respect to any issue. **Accordingly**, the action of the **Franchise Tax Board must be sustained**.

²¹ Because we have held Mr. Veteto to have been a resident, we find it unnecessary to **discuss** appellants' "separate property income" argument.

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ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation code, that the action of the Franchise Tax Board on the protest of James R. and Wanda J. Veteto against a proposed assessment of additional personal income tax and penalty in the amount of **\$5,633.04** for the year 1980, and against a proposed assessment of additional personal income tax in the amount of \$6,399 for the year 1981; on the protest of James R. Veteto against proposed assessments of additional personal income tax in the amounts of **\$3,233.50** and **\$2,866.50** for the years 1982 and 1983, respectively; and on the protest of Wanda J. Veteto against proposed assessments of personal income tax in the amounts of **\$3,113.50** and **\$2,785.50** for the years 1982 and 1983, respectively, be and the same is hereby sustained.

Done at Sacramento; California, this 1st day
of April, 1988, by the State Board of Equalization, with
Board Members Mr. Dronenburg, Mr. Collis, and Mr. Davies
present.

Ernest J. Dronenburg, Jr., Chairman

Conway H.'Collis, Member

John Davies*, Member

, Member

, Member

*For Gray Davis, per Government Code section 7.9